

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
SEP - 5 2008	
CLERK OF DISTRICT COURT DISTRICT OF NEVADA	
RY.	DEPUTY

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOE REED,

Plaintiff,

v.

JOE BRACKBILL, *et al.*,

Defendants.

3:07-CV-149-BES-RAM

ORDER

Before the Court is Defendants' Motion to Dismiss (#25) filed October 12, 2007. This action was referred to U.S. Magistrate Judge Robert A. McQuaid pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. The Magistrate Judge submitted his Report and Recommendation (#42) on July 2, 2008, recommending that this Court enter an order granting in part and denying in part Defendants' Motion to Dismiss (#25). Plaintiff filed his Objections to Magistrate Judge's Report and Recommendation (Doc #52) on August 18, 2008. On August 29, 2008 Defendants filed their Opposition to Plaintiff's Partial Opposition to The Report and Recommendation of U.S. Magistrate (#53).

I. ANALYSIS

A. Review of Magistrate Judge's Order

Any party may object to a magistrate judge's case dispositive proposed order, findings, or recommendations. 28 U.S.C. § 636(b)(1)(B); Fed.R.Civ.P. 72(b); LR 74.2. The district court must make a *de novo* determination of those portions of the magistrate judge's report to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. *Id.* De novo review means the court must

1 consider the matter anew, the same as if it had not been heard before and as if no decision
2 previously had been rendered. Ness v. Commissioner, 954 F.2d 1495, 1497 (9th Cir. 1992).
3 Thus, although the district court need not hold a de novo hearing, the court's obligation is to
4 arrive at its own independent conclusion about those portions of the magistrate judge's
5 findings or recommendation to which objections are made. United States v. Remsing, 874
6 F.2d 614, 617 (9th Cir. 1989).

7 After conducting a *de novo* review of the record, the Court accepts and adopts the
8 Magistrate Judge's recommendation (#42).

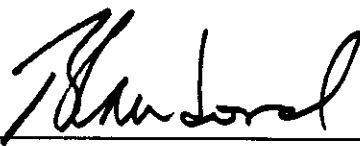
9
10 **III. CONCLUSION**

11 IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (#25) is GRANTED in
12 part and DENIED in part.

- 13 1. Defendants' request to dismiss Counts I, II and III for failure to exhaust
14 administrative remedies is DENIED.
- 15 2. Defendants' request to dismiss Count II and IV as to Defendant McDaniel for
16 lack of personal participation is DENIED.
- 17 3. Defendants' request to dismiss Plaintiff's Eighth and Fourteenth Amendment
18 claims in Count II of Plaintiff's complaint is GRANTED and DISMISSED WITH
19 PREJUDICE.
- 20 4. Defendants' request to dismiss Plaintiff's Eighth and Fourteenth Amendment
21 claims in Count IV of Plaintiff's complaint is GRANTED and DISMISSED WITH
22 PREJUDICE.
- 23 5. Defendants' request to dismiss Plaintiff's gross negligence claim in Count II is
24 GRANTED and DISMISSED WITH PREJUDICE.

25 IT IS SO ORDERED.

26 DATED: This 4th day of September, 2008.

27 
28 _____
UNITED STATES DISTRICT JUDGE